

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 89 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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THAKORBHAI VERIBHAI PATEL

Versus

THE STATE OF GUJARAT

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Appearance:

MR PM THAKKAR, SR. ADVOCATE for Petitioners  
MR. S.R. DIVETIA, ADDL. P.P. for Respondent

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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 10/02/97

ORAL JUDGEMENT (Per N.J. Pandya, J)

All the three accused-appellants were facing charge of murder under Section 302 read with Section 34 of the I.P.C. when one Bhailal Shankarbhai Patel was done to death on 28.8.1987 at 7.45 p.m. at village Masar, Taluka Padra, District Baroda. Copy of the death certificate is produced and taken on record.

2. The case of the prosecution is that the deceased was accompanied by his wife - Indumatiben, and his son Amrish as also Jyotikaben, wife of the nephew of the deceased. They left Masar village at about 9.00 a.m. also on that day for attending house warming ceremony held by his another son Anil. That Anil married one Pravina, daughter of accused No. 2 and sister of accused No. 1 and 3. The marriage was taken place about one and half years prior to the incident and this match was not approved by the accused No. 2. According to the prosecution, this was the motive for the present incident.

3. The deceased along with the aforesaid two persons returning from Baroda by evening bus of 6.30 p.m. and reached the village Masar by about 7.30 p.m. They alighted from the bus and proceeded towards the village. The deceased was walking ahead of the remaining two witnesses. At that time Amrish had also come at the bus stand to receive them. From the backside of them, three accused came. Accused No 1 was armed with an axe, No. 2 armed with dharia and 3 armed with stick. Accused No. 1 gave an axe blow on the head region of the deceased and he fell down. He was followed by accused No. 2 who gave a dharia blow and followed by accused No. 3 who gave a stick blow. There is a specific case of axe blow and dharia blow while the case of stick blow a vague and general reference has been made. That it lended on the backside. The witnesses accompanied by some other people of the village took then alive deceased in the very bus which had brought them, as the bus halted for the night on that village. They went to the S.S.G. Hospital, Baroda, where the Doctor tried to save the life but did not succeed. The patient died by about 8.30 a.m. on 29.8.1987 followed by postmortem note confirming the internal head injuries. There was a fracture in the occipital towards left temporo-parietal region resulting in subdural and subarachnoid haemorrhage with laceration of brain. The prosecution therefore relied on the eye witness account as well as medical evidence.

4. The learned Additional Sessions judge who tried the accused in Sessions Case No. 170 of 87 holding all the three persons guilty, had convicted them for life. During the pendency of the appeal, accused No. 2 expired and before that he was released on bail on 10.9.1993. The appeal is, therefore, surviving in respect of original accused No. 1 and 3.

5. We were taken through the eye witness account.

As stated by the trial court all three witnesses PW 1, PW 2, PW 3 respectively at Exhs. 11, 12 AND 13 more or less made consistent story in respect of the accident and accordingly all the three accused were implicated by them. The doctor who treated the deceased till he was alive is Dr. B.K. Patidar, PW 12, at Exh. 36, page No. 31 of the paper book. According to the case paper which are on record it is clear that the injury No. 1 which is shown in the postmortem note being CLW is, in fact, a incise wound. No default can be found with the doctor who performed the postmortem because he was dealing with a stitched wound.

6. Under the circumstances when the internal injuries as described in column No. 19 of the postmortem note is read along with the case papers produced by Dr. Patidar at Exh. 37 it is clear that it is the injury No. 1 which could have resulted into the fatality.

7. So far as the use of sharp cutting instruments are concerned, the prosecution can have a case of accused No. 1 and 2. Even according to the eye witness, reverse portion of dharia was used by accused No. 2. Thus, there was no question of that resulting into an incise wound. In so far as injury No. 1 this has been caused by axe only. Luckily the doctor who has kept the case papers Exh. 37 has also put rough sketch in the wardi at back of page 86 giving it a shape corresponding to a shape that is caused by a weapon like axe is used.

8. Connection of accused No. 1 with that injury is therefore clearly established. So far as case against accused No. 3 is concerned, there is hardly any. As if this is not enough, his name is not to be found at all in the police information which is to be treated as F.I.R. Exh. 15 at page 83. This is followed by Exh. 16, p. which is also another wardhi after death. There again only two names are to be found. These names are accused No. 1 and 2. Later on all the eye witnesses whose statements came to be recorded after the death have mentioned the name of accused No. 1 and 2. However when the person who gave the information to the concerned authorities that having accompanied the eye witnesses and having remained with them almost with the entire period, it does not give the name of the accused No. 3, in our opinion, serious doubt as to the case against him is created, no specific role is explained the one in a manner assigned and no corresponding role is to be found except the injury No. 2 CLW. Injury No. 3 is T-shape and is also described as CLW. This could have been caused by reverse dharia but the injury by stick was not referred to the laceration on the body of the deceased

and hence the general description coupled with in absence of any wardhi Exh. 15, in our opinion, would result into creating serious doubt as to the case against him and that the submission of the learned Senior counsel Mr. P.M. Thakkar appearing on behalf of the accused-appellant we are inclined to accept.

9. The learned counsel further developed the case with regard to accused No. 1 also in the following manner. The first eye witness Indumatiben Exh. 11 has admitted that the love marriage between the daughter of the accused No. 2 and her son having taken place one and half years back has never given any rise to any quarrel or any incident till the incident leading to the present case occurred. She has also admitted that it was clear that there was enmity between the two families in the past on this. The learned Advocate further submitted that if at all the incident is accepted to have happened something must be precedent to give provocation to the accused side to react violently in the manner. Therefore, there having been one incident which should be taken to be the result of either sudden provocation or the matter of sudden fight.

10. In our opinion, in absence of any other material on record, merely based on the said small admission on the part of the said Indumatiben, the case could not brought out of Section 302 for being dealt with under Section 304 Part II of I.P.C. Once the case is sought to put in any of the exceptions of Section 302, obviously it will fall into Section 304 of I.P.C. otherwise it will be a case of culpable homicide amounting to murder. However, this is not being the position, we do not accept the argument of the learned Advocate.

11. The net result is that the appeal partly succeeds. Accused-appellant No. 3 is given benefit of doubt. The orders of conviction and sentence passed against him are set aside. The appeal of accused-appellant No. 1 is dismissed. Appeal of accused-appellant No. 2 stands abated as he expired during the pendency of appeal. Accused-appellant No. 3 is acquitted. He is on bail. His bail bond stands cancelled.

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